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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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JUL 16 2002
CLERK US DIST COURT
WD OF WI

NEIL GAIMAN, and MARVELS
and MIRACLES, LLC,
Plaintiffs,

03-1461

-vs-

CASE NO. 02-C-0048-S

TODD McFARLANE, TODD
McFARLANE PRODUCTIONS, INC.,
TMP INTERNATIONAL, INC.,
McFARLANE WORLDWIDE, INC.,
and IMAGE COMICS, INC.,
Defendants.

ORIGINAL

DEPONENT: ALLAN INGLIS

DATE: Thursday, August 22, 2002

TIME: 12:05 p.m.

LOCATION: 32270 Telegraph Road, Suite 225

Bingham Farms, Michigan

REPORTER: Noreen K. Cwidak, CSR-3183, RPR

U.S.G.A. — 7th Circuit

FILED

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DOC. # _____

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7

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14 TMP International, Inc., and McFarlane Worldwide,

15 Inc.

16

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23

24

25

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ALLAN INGLIS

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Bingham Farms, Michigan

Thursday, August 22, 2002

12:05 p.m.

A L L A N I N G L I S,

Being first duly sworn to tell the truth, the
whole truth and nothing but the truth, testified
under oath as follows:

EXAMINATION

BY MR. SIMMONS:

Q Could you just state your name for the record,
please?

A Allan Inglis.

Q Where do you live?

A In Novi, Michigan.

Q Mr. Inglis, my name is Jeff Simmons. I'm an
attorney for Neil Gaiman, Marvels and Miracles.

Do you understand that you're here for a
deposition to give some testimony in a lawsuit
between Mr. Gaiman, Marvels and Miracles and
Todd McFarlane and some of the entities that
Mr. McFarlane is associated with?

A Yes, I do.

1 Q Have you ever given a deposition before?

2 A Yes.

3 Q When was that?

4 A Three years ago in the case of Tony Twist.

5 Q Well, why don't I go through some of the rules
6 for you again just to kind of refresh your memory
7 here. What we're trying to do in a deposition is
8 create a clear record for the court reporter. I'm
9 just going to ask you a series of questions and
10 you can give me the answer back.

11 In order to make sure we have a clear record,
12 we just have to try not to talk over each other.
13 So try to let me finish my question before you
14 answer and I'll try to let you finish your answer
15 before I ask you another question.

16 Also if you're answering a yes-or-no
17 question, just try to make sure you say yes or no
18 when you answer rather than nodding your head or
19 saying uh-huh because it just doesn't get picked
20 up by the court reporter.

21 If I ask you a question that doesn't make
22 sense or it seems confusing to you, feel free to
23 tell me that. Tell me to rephrase the question
24 or tell me you don't understand. Otherwise if I
25 ask you a question and you answer it, I'm going

1 to assume that you understood the question.

2 If you need to take a break at any point,
3 just let me know and we can take a short break.

4 Did you do anything in preparation for this
5 deposition?

6 A I read the material that I was given by Pete.

7 Q What was the material that you read?

8 A Material from a file that I created when I was
9 with TMP International, Inc. I was the chief
10 financial officer.

11 MR. SALSICH: If I can just speed things up,
12 for the record the documents that I sent to Allan
13 to review were all documents that have already
14 been produced by the McFarlane defendants in the
15 course of discovery in this action and were not
16 maintained -- were not any documents that were
17 maintained by Mr. Inglis individually. They
18 were documents that TMP or TMP International
19 and one of the McFarlane defendants had which
20 comprised the file and are documents that you all
21 have received. We did not provide Mr. Inglis
22 with any documents that have not been already
23 produced.

24 MR. SIMMONS: Maybe we'll see some of those
25 shortly.

1 MR. SALSICH: Sure.

2 Q (BY MR. SIMMONS) Did you talk to Todd McFarlane
3 at all within the last few weeks or so prior to
4 this deposition?

5 A I did not.

6 Q Can you just give me -- why don't you just briefly
7 walk me through your employment history, say,
8 after college or high school. Just hit the high
9 points. I don't need to know about waiter jobs or
10 anything like that.

11 A I'm a graduate of the University of Glasgow,
12 Scotland. I'm accredited with Canada and I'm a
13 Canadian charter accountant which is the Canadian
14 equivalent of the CPA designation.

15 After I worked in public accounting, I held
16 a number of financial management positions in
17 Canada, the U.S. and in Europe and I joined TMP
18 International, Inc., in August of 1996. I was
19 the CFO of TMP International until June of 2001.

20 Q Where had you worked just prior to joining TMP
21 International?

22 A I was with Magna International, Inc., in Toronto
23 and in Detroit. Magna International gives us
24 supply to the automotive industry.

25 Q How did you come to be employed by TMP

1 International?

2 A I had come back to -- I was living in the U.S. and
3 I was approached by a recruiter who was recruiting
4 for the financial management position at TMP
5 International, Inc. I interviewed with Todd
6 McFarlane and his associate and was subsequently
7 hired as the CFO.

8 Q What were your duties as the CFO?

9 A I had full financial management responsibilities
10 for TMP International, Inc., including financial
11 reporting, cash management, credit and other
12 related functions.

13 Q Were you the CFO during the entire time you were
14 employed by TMP International?

15 A Yes.

16 Q What were your -- do you recall approximately how
17 many employees TMP International had during that
18 time?

19 A Approximately 30.

20 Q Did you have any people working directly below you
21 assisting you?

22 A Yes.

23 Q About how many?

24 A Six.

25 Q Can you tell me who those people were?

1 A The controller, the credit manager, the
2 international manager and some related financial
3 support positions.

4 Q Do you remember the names of those people?

5 A Yes.

6 Q Can you tell me those names?

7 A Eric Light was the controller, Patrick Carron
8 was the international manager, Bambi Fisher was
9 the credit manager and there were other related
10 financial people.

11 Q Who were your superiors at TMP International?

12 A Paul Burke was the minority owner of TMP
13 International, Inc. He was my direct report in
14 Michigan and I also reported to Todd McFarlane
15 as CEO and owner of the company.

16 Q Todd McFarlane was the CEO and owner?

17 A Yes.

18 Q Was that during the entire time you were employed
19 there?

20 A Yes.

21 Q Do you recall what Paul Burke's title was?

22 A Paul Burke was the -- he was the CEO of TMP
23 International, Inc., and Todd McFarlane was the
24 CEO of the McFarlane group of companies.

25 Q So is it fair to say Todd McFarlane was Paul

1 Burke's superior?

2 A Yes.

3 Q Did Todd McFarlane have any specific position with
4 TMP International to your knowledge?

5 A Well, as the majority owner of the company, he
6 had overall responsibility and authority for the
7 operations of TMP International.

8 Q Were you aware of any other -- other than
9 Mr. Burke and Mr. McFarlane, are you aware of
10 any other shareholders of TMP International at
11 the time you worked there?

12 A No.

13 Q Do you recall who was on the board of directors
14 for the company during the time you were there?

15 A Todd McFarlane, Paul Burke and I was the director
16 of the company.

17 Q Anybody else?

18 A Not to my recollection and knowledge.

19 Q Did you ever perform any duties for any other
20 company controlled by Todd McFarlane?

21 A Only the toy companies. TMP International, Inc.,
22 owned McFarlane Toys-Canada and McFarlane
23 Worldwide which TMP International, Inc., and
24 McFarlane Toys-Canada operated in the North
25 American market. McFarlane Worldwide sold to

1 distributors throughout the world.

2 Q Can you explain to me a little bit more about what
3 McFarlane Worldwide did? You said they sold to
4 distributors. Can you expand on that a little
5 bit?

6 A Yeah. Just in relationship between TMP
7 International and McFarlane Worldwide, TMP
8 International, Inc., did business and does
9 business as McFarlane Toys. McFarlane Toys
10 sells toys directly to retailers in the United
11 States. McFarlane Toys-Canada is the same in
12 Canada. McFarlane Worldwide sells to distributors
13 of toys who in turn sell to the retailers in the
14 various international markets.

15 Q During the time you were working for TMP
16 International, was Todd McFarlane Productions
17 working out of the same office as TMP
18 International?

19 A No.

20 Q Where was Todd McFarlane Productions located at
21 the time?

22 A In Tempe, Arizona.

23 Q Did any Todd McFarlane Productions' employees work
24 out of TMP International's offices?

25 A No.

1 Q Are you aware of any employees of TMP
2 International who are also employees of Todd
3 McFarlane Productions?

4 A No.

5 Q Did anybody at TMP International perform some
6 duties for Todd McFarlane Productions?

7 A Only in the latter part of my time with TMP
8 International, Inc., the controller of Todd
9 McFarlane Productions left the company in 2000
10 and I assumed responsibility for the accounting
11 of Todd McFarlane Productions from 2000 until
12 2001.

13 Q You said you were the CFO of Todd -- excuse
14 me -- of TMP International, correct?

15 A Yes.

16 Q Was there also a CFO for Todd McFarlane
17 Productions during that time?

18 A Yes.

19 Q Do you know who that person was?

20 A There were a number of accountants between 1996
21 and 1999. Todd McFarlane Productions then hired
22 a controller and he was with the company I believe
23 for a year or so. So he was the controller of
24 Todd McFarlane Productions.

25 Q You considered him your counterpart even though he

1 didn't have the same title as you?

2 A That's right.

3 Q What was his name?

4 A Randy Williams.

5 Q You said you left TMP International just this
6 year, is that right?

7 A No, last year.

8 Q Why did you leave the company?

9 A The Michigan office was closed and all functions
10 were transferred to Tempe, Arizona and I chose to
11 remain in Michigan for family reasons.

12 Q Where are you employed now?

13 A I'm retired.

14 Q TMP International made toys or part of TMP
15 International did at least make or sell toys
16 based on characters in comic books produced by
17 Todd McFarlane Productions, is that correct?

18 A It was based mainly on the Spawn comic produced
19 by Todd McFarlane Productions. They also licensed
20 products and products owned by independent
21 licensors.

22 Q Can you give me some examples of those independent
23 licensors?

24 A Sony Signatures licensed TMP International, Inc.,
25 to manufacture toys based on the rock group Kiss

1 and more recently the National Hockey League
2 licensed TMP International, Inc., to manufacture
3 toys based on various ice hockey players.

4 Q Do you recall what the contractual arrangement was
5 with those companies? Did they receive -- how
6 were they compensated for TMP International making
7 those toys?

8 A They were compensated by a royalty based on sales
9 of the toys.

10 Q Do you recall what those royalties -- what the
11 percentage of those royalties were?

12 A The percentage varied anywhere from 4 or 5 percent
13 to 10 or 11 percent depending on a negotiated
14 agreement.

15 Q Did you ever participate in any negotiation of
16 those agreements?

17 A No. I participated in the financial analyses
18 and discussions that went into the financial
19 implications of the agreements.

20 Q That would be prior to entering into the
21 agreements?

22 A Yes.

23 Q Then after the agreements were entered into, did
24 you participate in calculating the payments to be
25 made to those licensors?

1 A One of the functions of my department was to
2 maintain records of all of the license agreements
3 and to make royalty payments in accordance with
4 the agreements.

5 Q Do you happen to recall which of those licensors
6 received the largest percentage royalty? Does
7 that stand out?

8 A Not specifically, but going back -- going to the
9 most recent agreements on sports figures, probably
10 those agreements were the highest royalty rates.

11 Q Do you recall what those royalty rates were?

12 A They were in that 10 or 11 percent range.

13 Q Who were those license agreements entered into
14 with?

15 A The sports association themselves, the National
16 Hockey League and the National Football League.

17 Q Sort of the overarching entities for those various
18 sports?

19 A Yes.

20 Q They would be in the 10 or 11 percent range?

21 A Yes.

22 Q What was the -- was there a similar arrangement
23 between Todd McFarlane Productions and Todd
24 McFarlane -- excuse me -- TMP International with
25 regard to royalties for characters?

1 A No.

2 Q Was any money transferred from TMP International
3 to Todd McFarlane Productions as a payment or
4 any sort of royalty for making toys or action
5 figures?

6 A There was an agreement between Todd McFarlane as
7 the creator of Spawn which ruled royalties payable
8 by TMP International, Inc., to Todd McFarlane.
9 Todd McFarlane assigned his royalty rights to
10 Todd McFarlane Productions.

11 Q I guess I'm having trouble following how that
12 worked. You said there was an agreement between
13 TMP International and Todd McFarlane, correct?

14 A Yes.

15 Q And then he assigned that agreement to --

16 A To Todd McFarlane Productions, yes.

17 Q Do you recall what the terms of that agreement
18 were or what the royalty percentage was
19 specifically?

20 A It was either 5 percent or 6 percent. I don't
21 specifically recall.

22 Q Was that agreement in effect the entire time you
23 were at TMP International?

24 A Yes, it was.

25 Q Do you recall the royalty percentage changing at

1 all during your time at TMP International?

2 A No.

3 Q What were the mechanics of the royalties?

4 With that 5 or 6 percent royalty, were payments
5 actually -- were checks cut from TMP International
6 to Todd McFarlane or Todd McFarlane Productions?

7 A I don't recall the period of time, but initially
8 Todd McFarlane deferred all payments under the
9 agreement and it was in 1999 I believe that
10 payments commenced.

11 Q When you say deferred the payments, Todd McFarlane
12 said something to the effect to TMP International
13 just don't make any royalty payments to me or Todd
14 McFarlane Productions?

15 A Yes.

16 Q Now, do you recall a time when you were asked to
17 calculate a royalty payment for Neil Gaiman?

18 A Yes.

19 Q Can you describe for me what you remember about
20 that?

21 A In 1997 I was asked to compute the royalty based
22 on a draft agreement between Gaiman and McFarlane.
23 I don't recall if it was with Todd McFarlane
24 Productions or -- I believe it was with Todd
25 McFarlane Productions. That draft agreement was

1 figured from discussions that had taken place
2 between Gaiman and McFarlane.

3 Q Who asked you to make that calculation?

4 A It would have been Todd.

5 Q You say it was a draft agreement. Do you recall
6 what it looked like? Did it look like a formal
7 typed out contract or was it more of a letter or
8 a fax sent?

9 A It was the basis of a formal contract.

10 Q What do you mean by that?

11 A Well, the basis of a formal license agreement
12 between the two parties.

13 Q Can you describe for me what that document looked
14 like?

15 A The basic structure is as follows: There's a
16 definition of the subject of the agreement,
17 whether it's merchandising or, you know, comic
18 book properties, it defines the properties, it
19 defines the royalty or other revenue obligations
20 under the agreement and then the conditions
21 attached to the agreement such as the rights
22 and obligations of the two parties.

23 Q Do you recall whether that was an agreement
24 drafted by Terry Fitzgerald?

25 A I don't recall.

1 Q Do you recall ever seeing an agreement drafted by
2 Terry Fitzgerald?

3 A No.

4 Q So why don't you go on and explain for me what the
5 process -- describe for me the process you went
6 through in calculating the royalty for Mr. Gaiman
7 after you looked at that draft agreement.

8 A What I'm going to describe is typical of what I
9 did under all agreements. I was given a draft
10 agreement and asked to calculate the financial
11 implications of the agreement, i.e., the royalties
12 payable under the agreement based on the terms
13 and conditions of the agreement.

14 Q So did you then come up with an estimate of what
15 you thought the royalty should be that would be
16 paid to Mr. Gaiman?

17 A Yes, I did.

18 Q Who did you give that estimate to?

19 A I gave it to Todd McFarlane.

20 Q What was Todd's reaction to that?

21 A He said, "You have interpreted this agreement in
22 terms of the typical toy license agreement. The
23 typical toy license agreement is between the
24 owner/creator of the property and the licensee,
25 i.e., McFarlane Toys was selling toys from the

1 property. The owner/creator in a typical toy
2 license agreement is the sole owner/creator
3 of the property."

4 He said, "This deal that I'm discussing
5 with Gaiman is not a toy license agreement.
6 It's an agreement between Todd McFarlane
7 who is the publisher because it was under a
8 publishing situation and Neil Gaiman who was
9 the writer/creator and the rules are quite
10 different between the typical toy license and
11 the license between a creator and a writer." He
12 then explained -- I had no experience at that
13 time in publishing. Todd then explained to me
14 how a typical agreement in the publishing world
15 worked.

16 Q What was that explanation that he gave you?

17 A The explanation is that there's a royalty payable
18 to the publisher and the writer gets a share of
19 the royalty that is payable to the publisher.

20 Q So what did you do after Mr. McFarlane gave you
21 that information?

22 A He said, "I'm going to give you the gist of the
23 discussions that have taken place between Neil
24 Gaiman and myself and I'll ask you to redo the
25 numbers to reflect the second kind of agreement,

1 not the typical toy license agreement."

2 Q Did Mr. McFarlane direct you to any portion of
3 the draft agreement you were looking at to
4 substantiate what he was saying?

5 A No. There wasn't a draft agreement at that
6 time other than the original draft of the
7 agreement. What he directed me to was handwritten
8 correspondence between him and Neil.

9 Q When in the process did he direct you to that
10 correspondence?

11 A Right after I had made the initial calculation
12 based on my understanding of what I thought was
13 going to be a toy license agreement. So this
14 all took place within a matter of days.

15 Q So how did you go about collecting the information
16 that you needed to calculate the royalty?

17 A Todd told me that the subject of the agreement
18 was specific comic book figures and I had in the
19 financial records of McFarlane Toys the sales of
20 these figures for the period of time that -- you
21 know, from the time that the characters had
22 been made into toys and July 1997 when these
23 discussions were taking place between Todd and
24 Neil.

25 Q Do you recall how TMP International maintained its

1 financial records at that time?

2 A We had a fully integrated computer system which
3 contained all of the financial records of TMP
4 International.

5 Q This would have been approximately a year after
6 you started with TMP International that you did
7 that?

8 A Yes.

9 Q You worked in financial positions at other
10 companies prior to that, correct?

11 A Yes.

12 Q What was your opinion, just generally, of the
13 state of TMP International's financial records at
14 the time you came in? Were they very accurate,
15 in great shape or were there pieces missing and
16 maybe a little less than complete than you would
17 like?

18 A It was a very accurate system.

19 Q Do you recall what the name of the computer
20 program or system was that the records were
21 maintained on at that time?

22 A It was called Great Plains.

23 Q How long -- do you recall how long TMP
24 International used that system?

25 A I think almost from the inception of the company

1 in 1994.

2 Q In calculating the royalties for Mr. Gaiman, were
3 there any portions of your calculations that you
4 had to use estimates?

5 A No.

6 Q It's your recollection you were able to just pull
7 out specific numbers for everything off of the
8 computer system?

9 A Yes.

10 Q During your discussions with Mr. McFarlane about
11 this, did Mr. McFarlane ever tell you that these
12 royalty payments to Mr. Gaiman were going to be
13 ongoing payments from that time forward?

14 A No, he did not.

15 Q Did he ever tell you "This is it. We're just
16 going to make this one payment to Mr. Gaiman" or
17 anything to that effect?

18 A That was my understanding.

19 Q It was just a one-time payment?

20 A Yes.

21 Q After this conversation with Mr. McFarlane where
22 he explained to you his understanding of the
23 agreement, did you have any further conversations
24 with Mr. McFarlane about the royalty calculation?

25 A No.

1 Q So what was the last step in the process then as
2 far as you were concerned?

3 A The calculation of royalties payable to Gaiman
4 according to discussions that had taken place
5 between Gaiman and McFarlane on sales of specific
6 toys for the period 1994 through 1997.

7 Q The last step was you just provided Todd
8 McFarlane, or was it somebody else, with the
9 royalty payment?

10 A It was Todd McFarlane.

11 Q After that did anybody associated with Todd
12 McFarlane ever speak to you again about royalty --

13 A No.

14 Q -- calculations?

15 I'm going to start showing you some documents
16 we have here.

17 A Okay.

18 MR. SIMMONS: Scott, are you still with us?

19 MR. FELDMANN: Yes, I am.

20 MR. SIMMONS: I'm going to start using
21 exhibits here and the first one was previously
22 marked as Exhibit 69. It appears to be a
23 spreadsheet of some sort. Do you want the
24 Bates numbers?

25 MR. FELDMANN: That would be helpful.

1 MR. SIMMONS: It's TM 410 through TM 432.

2 Q (BY MR. SIMMONS) Mr. Inglis, feel free to just
3 take a look at that. Is this document familiar
4 to you, Mr. Inglis?

5 A Not as it's shown here.

6 Q What do you mean by that?

7 A I have no recollection of this document being
8 produced by me or somebody in my department.

9 Q Does the form of the document look familiar to
10 you?

11 A I have seen a similar format, yes.

12 Q If you've seen similar forms, I'm just wondering
13 if you might be able to explain to me just a few
14 pieces of information about it based on having
15 seen documents like this before. Can you tell me
16 what the first -- I guess it's the second column
17 actually. What would things like Ames Department
18 Store and Army/Air Force Exchange be?

19 A The second column?

20 Q I'm sorry. It's the second column on the left.

21 A Okay.

22 Q Are those just customers?

23 A Yes. They're customers.

24 Q Let's go to the last column on the right. On the
25 first page it says five ninety-nine. Do you know

1 what that refers to?

2 A That's the invoice price.

3 Q That's the price that TMP International charged --

4 A Charged Ames.

5 Q Flip towards the back. I think it's page 19.

6 Excuse me. Actually why don't you go to page 20.

7 A Okay.

8 Q In the second column there's a bunch of entries
9 for TMP-Irwin Licensing Corp. and then moving
10 over to the right-hand column, there are
11 apparently a variety of different prices again.
12 It's no longer the consistent five ninety-nine
13 that it was on the prior page. Do you see where
14 I'm referring to?

15 A Yes.

16 Q Can you explain why those numbers might be
17 different here?

18 A That refers to the explanation I gave you about
19 the difference between the North American market
20 where McFarlane Toys or TMP International, Inc.,
21 sold directly to retailers and where TMP
22 International, Inc., or McFarlane Worldwide or
23 in this case at that time TMP-Irwin Licensing
24 Corporation sold to distributors in international
25 markets who in turn sold to retailers. Five

1 ninety-nine is the selling price to a North
2 American retailer. These other lower prices
3 are the selling prices to TMP International or
4 TMP-Irwin who in turn sold to distributors.

5 Q The prices seem to be -- looking at the top
6 of this page, page 20, it says Cosmic Angela.
7 Would it be your assumption that all the entries
8 here are for that one Cosmic Angela action
9 figure?

10 A I'm assuming that they are. As I said, I did
11 not author this document and I haven't seen it
12 before.

13 Q I understand.

14 Do you have any -- again looking at the
15 right-hand column, the prices that are entered
16 there are not consistent prices. There's a
17 variety of different prices. Do you have any
18 idea as to why the prices would vary so much
19 within one customer, TMP-Irwin Licensing?

20 A Because the products would be going to different
21 markets where the costs would be different.

22 Q What costs?

23 A The costs of shipping to different international
24 markets.

25 Q Jumping back a minute, when you were calculating

1 the royalty for Mr. Gaiman and you were
2 determining the number of units sold, did that
3 number include amounts sold to TMP-Irwin Licensing
4 or McFarlane Worldwide? Do you recall whether
5 sales for McFarlane Worldwide were included in
6 those figures?

7 A I don't specifically recall, but the sales
8 should have all been inclusive, i.e., sales of
9 the particular properties in all markets.

10 Q Let me show you what's been previously marked as
11 Exhibit 74.

12 MR. SIMMONS: Scott, this is TM 462.

13 Q (BY MR. SIMMONS) Would you take a look at that,
14 Mr. Inglis?

15 A Okay.

16 Q Noting in the lower right-hand column or I guess
17 it would be the lower left-hand corner based on
18 where you're looking at it, there's a date of
19 7-28-97. I'm just noting that the date appears
20 to be approximately the time you were making the
21 royalty calculation for Mr. Gaiman.

22 A Yes.

23 Q I'm wondering if this is a document that you
24 recall seeing before.

25 A I haven't seen this specific document, but I know

1 what it is.

2 Q Can you tell me what it is?

3 A At the top it says "Spring Shipping Schedule."

4 That would have come from the records of the
5 production manager who is also the president of
6 McFarlane Toys. So it's his way of tracking the
7 production and shipments from the factories to
8 the distribution center in the United States.

9 Q Is this a document you would have looked at in
10 trying to calculate the royalty for Mr. Gaiman?

11 A No.

12 Q Why not?

13 A Because it's simply a production and shipping
14 schedule as opposed to a sales record.

15 Q I'm showing you now what's been previously marked
16 as Exhibit 75.

17 MR. SIMMONS: Scott, that's TM 463.

18 Q (BY MR. SIMMONS) Mr. Inglis, take a look at
19 that.

20 A Okay.

21 Q Again I'll just note the date in the lower
22 left-hand corner is July 28, '97.

23 A Uh-huh.

24 Q Does this document look familiar to you at all?

25 A No.

1 Q Does the format of the document look familiar to
2 you?

3 A Yeah. It's similar to the Spring Shipping
4 Schedule. It shows the week in which the product
5 would be shipped from the factory, the quantities
6 able to be shipped and then the quantities by
7 toy.

8 Q Do you recall whether you would have reviewed
9 any document similar to this in calculating
10 Mr. Gaiman's royalty?

11 A No, I would not.

12 Q You would not have?

13 A No.

14 Q Why not?

15 A Because in calculating royalties, we relied
16 entirely on the sales records, not production
17 records. Royalties are payable in sales.

18 Q Let me show you what's been previously marked as
19 Exhibit 76.

20 MR. SIMMONS: Scott, that's TM 464.

21 THE WITNESS: Okay.

22 Q (BY MR. SIMMONS) Again I'll note that this
23 document also has a date of July 28, 1997.

24 A Uh-huh.

25 Q Does this document look familiar to you at all?

1 A No.

2 Q Have you seen this form of a document before?

3 A Yes, I have.

4 Q Can you explain to me what it is?

5 A The heading is "Total figures, vehicles, play sets
6 by ship date" meaning the date of shipment from
7 the factory. It shows down the left-hand side
8 the ship dates by week and then the quantities
9 shipped by toy. Again it's a production and
10 shipping record.

11 Q And you have no recollection of creating a
12 document like this at the time you were
13 calculating Mr. Gaiman's royalty?

14 A No.

15 Q Let me show you Exhibit 77.

16 MR. SIMMONS: Scott, this is TM 465.

17 THE WITNESS: Okay.

18 Q (BY MR. SIMMONS) Again I'll note in the lower
19 either left or right-hand corner, depending on how
20 you're looking at it, the date says July 28th,
21 1997. Do you recall ever seeing this document
22 before?

23 A No, I have not.

24 Q Are you familiar with this form of a document?

25 A Yes.

1 Q Can you tell me what this document is?

2 A At the top it says "Spawn 1995 Fall." That means
3 the Spawn toy line was brought into the market in
4 the fall of 1995. The left-hand column is headed
5 "Ship HK" which means shipped out of Hong Kong.
6 Below that you see all the dates of the shipments
7 and then across the quantities by toy related to
8 these dates.

9 Q When you were calculating the royalty for
10 Mr. Gaiman, was anybody on your staff assisting
11 you in that calculation?

12 A Yes.

13 Q Who assisted you?

14 A It was Patrick Carron, C-a-r-r-o-n. Patrick
15 maintained all of the records relating to all
16 license agreements and royalty payments.

17 Q Do you recall what you had Mr. Carron do to
18 assist you in calculating the royalty?

19 A Any royalty or --

20 Q I'm sorry. You stated that Mr. Carron assisted
21 you in calculating the royalty for Mr. Gaiman,
22 correct?

23 A Yes.

24 Q What specifically did you have Mr. Carron do to
25 assist you in calculating that royalty?

1 A I asked him to compile from the sales records
2 in our financial system the sales by a particular
3 property and the sales would be units sold and
4 quantities -- sorry -- unit sold and sales
5 dollars.

6 Q Did Mr. Carron provide you with documents that
7 showed you the information he provided or did he
8 just tell you "Here are the sales"?

9 A Yeah. We reviewed the detailed sales records and
10 then the summary calculation of the royalties.

11 Q I'm sorry. Did you say you reviewed that or
12 Mr. Carron reviewed that?

13 A Mr. Carron compiled it. It was my practice to
14 review the details. Being an accountant, I want
15 to tie the numbers from the sales records to the
16 royalty statements.

17 Q So you saw some sort of -- Mr. Carron provided you
18 with some sort of printed documents that you then
19 used --

20 A Yes.

21 Q -- to figure out what the royalty should be?

22 A Yes.

23 Q You stated earlier that in preparing for this
24 deposition you reviewed certain documents that
25 had been produced by the parties. Were the

1 documents that Mr. Carron provided you among the
2 documents that you reviewed to prepare for this
3 deposition?

4 A Yes.

5 Q Do you recall what they looked like?

6 MR. SIMMONS: Do you want to go off the
7 record?

8 MR. SALSICH: Let's go off the record for a
9 second.

10 (Off the record.)

11 MR. SIMMONS: Back on.

12 Q (BY MR. SIMMONS) Mr. Inglis, we're back from a
13 short break here. I had a discussion with your
14 attorney. It sounds like we want to clarify what
15 your testimony was before. You testified earlier
16 that you reviewed certain documents provided to
17 you by defense counsel in preparing for this
18 deposition, correct?

19 A Yes.

20 Q Were the documents that Mr. Carron showed to you
21 back in 1997 among the documents that counsel
22 provided to you just recently to prepare for this
23 deposition?

24 A No, they were not.

25 Q Have you ever -- do you recall ever receiving the

1 document that Mr. Carron provided to you back in
2 1997? Do you recall ever seeing those documents
3 again?

4 A Yes.

5 Q When did you see those documents again?

6 A Yesterday.

7 Q The documents that Mr. Carron provided to you in
8 1997?

9 A It was specifically a statement of calculation of
10 royalty. It was a summary statement.

11 Q I've got some more documents here so they may be
12 coming up.

13 I'll show you what's been marked as Exhibit
14 73.

15 MR. SIMMONS: Scott, this is TM 460.

16 Q (BY MR. SIMMONS) Do you recognize Exhibit 73,
17 Mr. Inglis?

18 A I recognize the information in Exhibit 73, yes.

19 Q Can you tell me what that information is?

20 A Again it comes from the production records. It's
21 for the Spawn 12-inch figures. Again it's a
22 toy line. It says 1996. It shows tooling cost
23 and again like previous documents, it shows the
24 dates of shipment out of Hong Kong and then the
25 quantities shipped by toy.

1 Q And then it says --

2 A That would be the -- the top part I believe would
3 be the planned plant production and shipping.
4 The bottom part, as you can see, shows actual
5 shipments.

6 Q Then in between those two tables that you just
7 pointed to, there's a section that says tooling,
8 correct?

9 A Yes.

10 Q Can you explain to me what that is?

11 A That's the tooling that is used in the factory to
12 produce the toys. That tooling is purchased by
13 TMP International, Inc., and then the tool is
14 shipped to the factories for production. This
15 information says that the total tooling was
16 \$117,329 and was to be paid over three payments
17 which was the typical payment schedule.

18 Q Was this one of the documents that Mr. Carron
19 provided you when you were preparing the royalty
20 in 1997?

21 A No, it was not.

22 Q Do you recall whether he provided you with
23 anything similar to this document at that time?

24 A No, he did not.

25 Q I'll show you what's been marked as Exhibit 72.

1 MR. SIMMONS: Scott, that's TM 459.

2 THE WITNESS: Okay.

3 Q (BY MR. SIMMONS) Do you recognize Exhibit 72?

4 A No, I do not.

5 Q Do you recognize the handwriting on Exhibit 72?

6 A Yes, I do.

7 Q Whose handwriting is that?

8 A I believe it's Pat Carron's.

9 Q But you don't recall having seen this document
10 before?

11 A No, I do not.

12 Q Is this document at all similar to documents you
13 remember Mr. Carron provided you when you were
14 doing the royalty calculation in '97?

15 A No, it is not.

16 Q Looking at the table at the top of the page, you
17 see in the left-hand column there's an entry for
18 the Angela figure. Do you see that?

19 A Uh-huh.

20 Q Moving across it says units produced and then it
21 says total units sold.

22 A Uh-huh.

23 Q You'll note that it looks like units produced is
24 188,000 whereas units sold is 222,170. Do you see
25 that?

1 A Uh-huh.

2 Q Units sold appears to be higher than the number of
3 units produced.

4 A Uh-huh.

5 Q I realize you don't remember seeing this specific
6 document, but just based on your knowledge of TMP
7 International's practices in sales, do you have
8 any explanation why the entry for total units sold
9 would be higher than the entry for total units
10 produced?

11 A The total units sold comes from the sales records
12 which in turn are derived from the sales invoices
13 to the customers. So the total units sold
14 would be -- is a very factual figure. The units
15 produced -- I can't explain the units produced
16 figure. It would presumably come from the
17 production records, but I can't account for the
18 difference between the two.

19 Q Do you think the sales number would be more
20 accurate of the two?

21 A Absolutely.

22 Q I'm wondering if you might be able to explain some
23 of the other terms used on this document. Moving
24 across the top of that table it says units sold
25 regular.

1 A Uh-huh.

2 Q Do you know what that term means?

3 A That would be to use pricing from a previous
4 schedule. Units sold regular would be units
5 sold at five ninety-nine.

6 Q And you're referring to the earlier exhibit we
7 showed --

8 A Yes.

9 Q -- with the long list of items?

10 What is units sold discounted?

11 A That would be units sold at something less than
12 five ninety-nine.

13 Q For example, like the toys that McFarlane
14 Worldwide sold?

15 A No. It would be toys sold -- perhaps toys at the
16 end of the life of the toy to retailers as we
17 cleared out inventory or for whatever reason we
18 decided to sell them at a lesser price.

19 Q So TMP International could be the entity making
20 those sales at a discount?

21 A Yes.

22 Q Regular revenue and revenue discounted, can you
23 explain those terms?

24 A That would be just simply an arithmetical
25 calculation of units sold regular times whatever

1 the regular price was for that particular item
2 and then revenue discounted is again units sold
3 discounted times whatever the discounted prices
4 were.

5 Q Referring to the handwritten section below that,
6 on the third line down there's a notation. It
7 looks like International sales to TMP-Irwin.

8 A Yes.

9 Q It says "appear under discounted sales."

10 A Uh-huh.

11 Q Can you explain what you think that means?

12 A That just means that included in that units
13 sold discounted quantity are the units sold by
14 McFarlane Toys to TMP-Irwin, the international
15 distributor.

16 Q Why is it that it's under discounted sales?

17 A Simply I would think for the convenience of this
18 particular report since the quantities are
19 relatively small in relationship to the units
20 sold regular.

21 Q But is the price charged to TMP-Irwin different
22 than the price charged to other entities?

23 A Yes, as I explained in my explanation of the
24 previous report.

25 Q I'll give you another exhibit. This one has not

1 previously been marked.

2 MR. SIMMONS: Scott, this is TM 552.

3 We'll mark this as Exhibit 121.

4 (Deposition Exhibit Number 121 was marked
5 for identification by the Court Reporter.)

6 Q (BY MR. SIMMONS) Do you recognize this document,
7 Mr. Inglis?

8 A Yes, I do.

9 Q Can you tell me what it is?

10 A I recognize it in that it's in my writing.

11 Q That's your handwriting?

12 A Yeah. It would appear to be my way of explaining
13 in some discussion the factors that are deducted
14 from gross sales in arriving at a net sales
15 number and then other deductions from net sales
16 specifically which you see there was freight,
17 duty, taxes, insurance and shipping.

18 Q Can you --

19 A There's no heading as you can see. So I can't
20 recall the context in which I might have written
21 this.

22 Q Can you read the last line? Can you just tell me
23 what that says?

24 A Marketing expenses.

25 Q Is that it, marketing expenses?

1 A Yeah.

2 MR. SIMMONS: We have another new document.
3 We'll mark this as Exhibit 122.

4 Scott, this is TM 485.

5 (Deposition Exhibit Number 122 was marked
6 for identification by the Court Reporter.)

7 Q (BY MR. SIMMONS) Have you had a chance to look it
8 over, Mr. Inglis?

9 A Yes.

10 Q Do you recognize Exhibit 122?

11 A Yes, I do.

12 Q Can you tell me what it is?

13 A This document, as you can see, was compiled on
14 the 29th of July which was the time that I began
15 to do the financial analyses which Todd McFarlane
16 asked me to do in his discussions with Neil
17 Gaiman. It shows the properties under the column
18 called "Figure," again the units produced and
19 sold and then the sales dollars and then a
20 calculation of the royalty based on my
21 understanding of the agreement that was being
22 discussed.

23 Q Is this a document you created?

24 A That's a document that Patrick Carron created.

25 Q Do you see the line that says whole discounts at

1 8 percent?

2 A Yes.

3 Q Do you know what that means?

4 A That means that's the discounts from sales. If
5 you relate to the handwritten document that
6 we just discussed, that would be the allowances
7 that -- it describes the allowances on the
8 handwritten schedule and discounts in the
9 printed schedule.

10 Q I don't have an accounting background. Allowances
11 or discounts, can you give me some examples of
12 what would be comprised with those terms?

13 A In TMP International, Inc.'s negotiations or
14 dealings with a retail customer, the company gave
15 certain allowances to the customer for particular
16 purposes, specifically advertising by the customer
17 of McFarlane Toys products and defective products
18 which is a product that was shipped to the
19 customer which proved to be damaged in some way
20 and any other allowances that were paid to the
21 customer.

22 Q So how -- it says 8 percent here. How is the
23 8 percent figure arrived at?

24 A There's a specific percentage established in these
25 negotiations with the customer.

1 Q So is the 8 percent something that's given across
2 the board to all the customers?

3 A It's a percentage that is not consistently
4 8 percent, but typically that would be the
5 percentage of all allowances given to or offered
6 to all customers.

7 Q This entry on Exhibit 122 says 8 percent. Is it
8 your understanding that the 8 percent represents
9 the total discounts offered to all the customers
10 or each individual customer may get a different
11 percentage, but when you add them all up or
12 average them out, it comes out to 8 percent?

13 A Yeah, and that may have been when this handwritten
14 document was produced. As you can see, the
15 allowances there are shown as 8.67 percent.

16 Q And you're referring to Exhibit 121?

17 A Yes.

18 Q On Exhibit 121 the allowances are customer
19 advertising, markdowns and --

20 A Defective product.

21 Q Thank you.

22 And then moving down in Exhibit 122, there's
23 an entry for royalty rate. Do you see that as
24 .035?

25 A Yes.

1 Q Do you know where that figure came from?

2 A That came from the original discussion that was
3 taking place on the Gaiman/McFarlane royalty
4 arrangements with respect to these particular
5 figures.

6 Q I'm sorry. I missed the first part. Did you
7 say there was a document or was it just -- did
8 somebody tell you about the .035 figure or was
9 that something you pulled off of a document?

10 A It came from the draft agreement.

11 Q That's the draft agreement you were referring to
12 earlier?

13 A Yes.

14 Q And then finally on this document on the last
15 line, it indicates royalty due and it says
16 \$158,690.62, correct?

17 A Yes.

18 Q And this again is a calculation that Pat Carron
19 did for you?

20 A Yes.

21 Q Actually I have one last question. There's
22 some handwriting just to the right of the
23 royalty due amount. Do you see that there's
24 some handwriting?

25 A Uh-huh.

1 Q Do you know whose handwriting that is?

2 A No, I do not.

3 Q Any idea what -- it looks like discounted revenue
4 royalty. Is that what it looks like to you?

5 A That's what it looks like.

6 Q Does that term mean anything to you?

7 A No, it doesn't.

8 MR. SIMMONS: This is another new exhibit
9 here. This will be Exhibit 123.

10 Scott, that's TM 486.

11 (Deposition Exhibit Number 123 was marked
12 for identification by the Court Reporter.)

13 Q (BY MR. SIMMONS) Do you recognize Exhibit 123,
14 Mr. Inglis?

15 A Yes, I do.

16 Q Can you tell me what that is?

17 A This document, as you can see from the date and
18 time, was prepared very shortly after the previous
19 document, Exhibit 122. It simply refines the
20 numbers in Exhibit 122. It provides some more
21 detail on the deductions from the net wholesale
22 cost and some minor revisions to the sales
23 numbers.

24 Q Is this a document that you created?

25 A No.

1 Q Is this something that Pat Carron created?

2 A Yes.

3 Q And then he would have provided it to you?

4 A Yes.

5 Q Do you recall having discussions with Mr. Carron
6 in between the time he presented you with
7 Exhibit 122 and the time he presented you with
8 Exhibit 123?

9 A I don't recall the specific discussion, but it
10 was -- this was done with a considerable amount
11 of urgency. So I conclude that between 3:56 p.m.
12 and 7:09 p.m. on that day Mr. Carron went back
13 and just reviewed his calculations and made some
14 minor revisions.

15 Q It looks like -- I'm just going to go through
16 what appear to be some of the differences here.
17 First of all, in Exhibit 123 the amount of total
18 revenue is lower than the amount of total revenue
19 in Exhibit 122, is that correct?

20 A Yes.

21 Q Do you know why that would be?

22 A Again simply because, as you'll see, the units
23 sold regular are the same in both reports and
24 the units sold discounted are less in the second
25 report just in reviewing the numbers. Pat Carron

1 made some minor revisions to the quantities which
2 resulted in a minor revision to the total revenue
3 number.

4 Q And overall it's a reduction -- a net reduction in
5 total sales, correct?

6 A Yes.

7 Q And all of your sales records were maintained on
8 computer, correct?

9 A Yes.

10 Q Why would it be that the sales numbers would
11 change?

12 A These summaries came from very detailed sales
13 records and Patrick may have overlooked or
14 otherwise miscalculated one of the numbers that
15 he took from the detailed sales records.

16 Q And then moving down on Exhibit 123 where we have
17 some of the costs broken out, I note that the
18 freight percentage is lower in Exhibit 123 than
19 it was in Exhibit 122. Is that correct?

20 A Uh-huh.

21 Q Why would that be?

22 A I can't explain it at this distance.

23 Q Sure.

24 Do you recall having any discussions with
25 Mr. Carron about making changes to the costs?

1 A I can't recall, but I'm sure I did. If you refer
2 to the handwritten -- my handwritten document,
3 you'll see that the freight percentage that is in
4 my handwritten document is 2.54 percent in this
5 schedule.

6 Q And then again moving down to the bottom, the
7 royalty due under the calculation in Exhibit 123
8 is a hundred and fifty thousand dollars and some
9 change, correct?

10 A Uh-huh.

11 Q And again on both of these documents, Exhibit 122
12 and 123, where the entry says royalty due, is
13 it your understanding that that was the royalty
14 you believe to be due to Mr. Gaiman under this
15 calculation?

16 A Yes, based on my understanding of the draft
17 agreement that I was given.

18 MR. SIMMONS: Mark this as Exhibit 124.

19 (Deposition Exhibit Number 124 was marked
20 for identification by the Court Reporter.)

21 THE WITNESS: Okay.

22 Q (BY MR. SIMMONS) Do you recognize Exhibit 124?

23 A Yes. I can't deny the authorship of it.

24 Q This is a memo authored by you, is that correct?

25 A Yes.

1 Q In the first sentence of the memo you say this is
2 your calculation of the royalty payable to Neil
3 Gaiman and then it moves on to say "based on our
4 interpretation of the draft agreement," correct?

5 A Yes.

6 Q And by "draft agreement" you mean that written
7 agreement that you had initially looked at?

8 A Yes.

9 Q And you say the total royalty is \$155,531?

10 A Uh-huh.

11 Q Do you recall Mr. McFarlane contacting you after
12 receiving this letter?

13 A Yes. I'm sure he did.

14 Q Do you recall what Mr. McFarlane said?

15 A It would be typical of discussions that Todd and
16 I had on all such agreements, license agreements
17 or any other royalty agreements. He would have
18 had me explain the calculations that I did
19 in arriving at the total royalty and my memo
20 explained some of my interpretations of the key
21 terms in the agreement. That would be the gist
22 of the discussions that Todd and I would have
23 had about this calculation. As you can see, the
24 total royalty number agrees with the previous
25 schedule you gave me.

1 Q Do you recall anything specific about your
2 conversation with Mr. McFarlane?

3 A Yes. It might not have taken place right at that
4 moment, but there was a follow-up discussion which
5 I referred to earlier in which he said "You have
6 interpreted this agreement in terms of the typical
7 toy license agreement with which you're familiar.
8 This is not a toy license agreement because we're
9 not talking about exclusive owner and licensor and
10 licensee. We're talking about writer/creator
11 collaboration with the publisher."

12 He then went on to explain the differences
13 between the two where, and I said this earlier,
14 in the second kind of agreement regarding the
15 writer/creator/publisher collaboration, there's a
16 sharing of the royalty revenue. He then asked me
17 to -- he then referred me to correspondence that
18 had taken place between him and Neil Gaiman on the
19 subject.

20 Q Turning to page 2 of Exhibit 124, the first
21 sentence says "Because of the time constraint,
22 we have used a percentage in calculating the
23 deductions from gross sales to arrive at sales
24 subject to the royalty." Can you just explain
25 to me what that is referring to?

1 A That refers to these items that are shown on the
2 first page such as allowances, freight, duty,
3 taxes, insurance, shipping and marketing. We
4 used percentages that -- as I said, it's based on
5 historical fact and are supportable. In other
6 words, we didn't take all of the sales, you know,
7 for all of the customers and identify that that
8 particular customer was paid X percent for
9 advertising and another customer was paid X plus
10 or minus percent for advertising. We used an
11 overall percentage based on historical fact.

12 Q So was it an average number?

13 A Yes, because of the time constraint.

14 Q I'll show you what's been previously marked as
15 Exhibit 78.

16 MR. SIMMONS: Scott, that's TM 466.

17 Q (BY MR. SIMMONS) Do you recognize Exhibit 78?

18 A Yes, I do. It's clearly a worksheet that would
19 have been prepared during these discussions.

20 Q Is this something prepared by you?

21 A It would have been prepared by Patrick Carron.
22 The handwritten words and numbers are mine.

23 Q Looking at some of the handwritten entries, going
24 about three-quarters of the way down, do you see
25 where it says royalty rate?

1 A Yes.

2 Q And then it looks like you handwritten in
3 publisher, Todd McFarlane, is that right?

4 A Uh-huh.

5 Q And then you crossed a number out and put in
6 5 percent?

7 A Uh-huh.

8 Q Can you tell me why that change was made?

9 A That was the royalty that was payable to Todd
10 McFarlane under that agreement that I referred to
11 between Todd McFarlane and TMP International,
12 Inc., on toy sales.

13 Q It looks like you just take that percentage and
14 multiply that by the net revenue that would have
15 been earned on toys --

16 A Yes.

17 Q -- and you come up with a publisher's royalty of
18 approximately \$222,000, is that correct?

19 A Uh-huh.

20 Q Now in making that calculation, did you do it just
21 as I described? You simply took 5 percent and
22 multiplied it by the net revenue?

23 A Yes.

24 Q You didn't look to any records to see what the
25 actual royalty payments from TMP International to

1 Todd McFarlane Productions were, correct?

2 A No, but I would have known from the royalty
3 agreement with Todd that the royalty was
4 5 percent.

5 Q I think you actually may have testified earlier
6 that during this time period there weren't
7 even any royalty payments being made from TMP
8 International to Todd McFarlane Productions
9 despite the existence of the agreement, correct?

10 A Yes.

11 Q And then finally the last line says
12 co-creator's --

13 A Fee.

14 Q Is that it?

15 A Yeah.

16 Q That has 7.5 percent which I think is higher than
17 the 3.5 that had been listed in the previous
18 documents we looked at. Do you recall why that
19 number was now 7.5 percent?

20 A The original document before I made these changes
21 reflected a royalty rate of 3.5 percent of total
22 sales. That was based on my interpretation of
23 that draft license agreement, 3.5 percent being
24 the rate payable to the creator.

25 Subsequent to that calculation, Todd

1 McFarlane, and I explained this earlier, explained
2 to me how this arrangement was between the
3 co-creator or the writer/creator and the
4 publisher. So I said, "What does that mean in
5 terms of the numbers?" He said, "The sales
6 numbers don't change." The royalty rate to the
7 publisher, i.e., Todd McFarlane, is 5 percent
8 based on Todd McFarlane's agreement with TMP
9 International, Inc., giving the publisher's
10 royalty number that you see there. The co-creator
11 fee of seven-and-a-half percent came out of the
12 discussions that he explained to me were taking
13 place between him and Neil Gaiman on the fees that
14 would be paid to the co-creator as it says right
15 here.

16 Q Regarding this document, Exhibit 78, do you recall
17 sending this off to Todd McFarlane?

18 A I don't specifically recall, but I'm sure I -- if
19 this came out of the files in Phoenix or Tempe, I
20 would have sent it to him.

21 Q Do you recall having any sort of communication
22 with Mr. McFarlane where you said "I've
23 recalculated the royalty and it's now
24 approximately \$16,000"?

25 A Yes.

1 Q Do you recall what Mr. McFarlane's reaction was to
2 that?

3 A No, I don't.

4 MR. SIMMONS: This is a new exhibit.

5 (Deposition Exhibit Number 125 was marked
6 for identification by the Court Reporter.)

7 MR. SIMMONS: Scott, this is TM 493 through
8 495.

9 Q (BY MR. SIMMONS) Do you recognize Exhibit 125?

10 A Yes, I do.

11 Q Can you tell me what that is?

12 A As the memo says, I received correspondence
13 that had taken place between Neil Gaiman and
14 Todd McFarlane dated May 5th and July 15th. I
15 interpreted Neil Gaiman's July 15th note to
16 say that he's entitled to 15 percent of Todd
17 McFarlane's royalty, i.e., the publisher's royalty
18 for Angela which was one of the properties at
19 issue. Neil Gaiman agreed that he gets 50 percent
20 of 15 percent, i.e., seven-and-a-half percent,
21 for Medieval Spawn. That's how the amount owing
22 to Gaiman is calculated in the attached schedules.
23 These percentages, as I said, came out of
24 correspondence that had taken place between Neil
25 and Todd which I had just seen for the first

1 time, you know, on July 30th.

2 Q The correspondence between them?

3 A Yes.

4 Q I'll just note that Exhibit 125 looks like it was
5 created the day after the document I just showed
6 you previously, Exhibit 78.

7 A Uh-huh.

8 Q The royalty figure is now higher, correct? It's
9 24,800 in Exhibit 125, correct?

10 A Yes.

11 Q And that's a result of adjusting the royalty
12 percentages for each character, is that accurate?

13 A That's right.

14 Q Do you recall having any conversations with
15 Mr. McFarlane after you sent him this document?

16 A I don't recall a specific conversation, but again
17 going back to the process that I explained
18 earlier, he would have had me explain all of
19 the numbers and the various percentages used.
20 He wanted to know specifically whether the
21 publisher's royalty rate and the writer/creator
22 royalty rate reflected these discussions that he
23 had been having with Neil Gaiman.

24 Q You don't recall him coming back and asking you
25 to make any further changes to the royalty

1 calculation at that point?

2 A No, I do not.

3 MR. SIMMONS: This is another new document.

4 This will be Exhibit 126.

5 (Deposition Exhibit Number 126 was marked

6 for identification by the Court Reporter.)

7 Q (BY MR. SIMMONS) Do you recognize Exhibit 126?

8 A Yes, I do.

9 Q Is this a document you created?

10 A It's a document that Patrick Carron created and I
11 reviewed. I made the handwritten changes that you
12 see there.

13 Q I note in comparing this to Exhibit 125 that it
14 looks like there are two other differences to
15 me. First, looking at Exhibit 126, you have
16 the publisher's royalty rate. It's now listed as
17 8 percent. It previously had been listed as
18 5 percent.

19 A Uh-huh.

20 Q Do you know why the publisher's royalty rate was
21 now listed as 8 percent?

22 A In the typical negotiation process that
23 takes place between a licensor/licensee or
24 publisher/creator, there can be many iterations
25 on the calculations that I would do based on

1 the discussions that had been taking place between
2 Todd and whoever the other party was. Typical
3 of the discussions between Todd and myself would
4 be where he would say "What if we set different
5 rates? How do the numbers come out?" That would
6 be how this document originated. He might say
7 "What if the publisher's rate is now 8 percent and
8 the creator royalty rates are unchanged from the
9 previous discussions, 3.75 percent on Medieval
10 Spawn and 7.5 percent on Angela?" There may have
11 been other documents similar to this that my
12 department would have produced.

13 Q My understanding, correct me if I'm wrong, is that
14 the publisher's royalty rate refers to the royalty
15 percentage between TMP International and Todd
16 McFarlane Productions, correct?

17 A Yes.

18 Q With regard to this 8 percent figure in Exhibit
19 126, was that a royalty percentage that TMP
20 International at least theoretically was paying
21 to Todd McFarlane Productions?

22 A What do you mean by "theoretically"?

23 Q Well, my understanding is the payments weren't
24 made during this time period, but there was an
25 agreement to pay royalties. So was there some

1 sort of agreement to pay the royalty at a
2 8 percent rate?

3 A No.

4 Q So why then is the 8 percent figure here?

5 A It was just a what if in the discussions that
6 would take place between Todd and myself.

7 Q Why would you have a what if discussion about
8 the royalty percentage between Todd McFarlane
9 Productions and TMP International?

10 A Because the royalty rate that is payable to the
11 creator, as I mentioned in the typical toy license
12 agreement, could vary from property to property.
13 So he might have said to me "What if I say the
14 royalty rate is 8 percent?"

15 Q Do you recall Todd saying that to you or made some
16 suggestion to that effect?

17 A No, but he probably did. I mean I wouldn't have
18 just taken, you know, a number of 8 percent except
19 from a discussion I would have had with him.

20 Q And then moving down in Exhibit 126, I note that
21 the creator royalty rates are now 3.75 percent and
22 7.5 percent as opposed to 7.5 and 15 percent in
23 Exhibit 125.

24 A Uh-huh.

25 Q Do you know why that change was made?

1 A No, I don't.

2 Q Any recollection of Mr. McFarlane saying that you
3 need to cut those amounts in half?

4 A No.

5 Q But any changes you would have made to this
6 document would have been made at Mr. McFarlane's
7 suggestion?

8 A Yes.

9 Q I just note that the total royalty now appears to
10 be \$19,840, correct?

11 A Yes.

12 Q That's again the royalty that you believe was
13 payable to Mr. Gaiman under the agreement?

14 A As compared to \$24,800.

15 MR. SIMMONS: This will be Exhibit 127.

16 Scott, this is TM 496.

17 (Deposition Exhibit Number 127 was marked
18 for identification by the Court Reporter.)

19 Q (BY MR. SIMMONS) Do you recognize Exhibit 127?

20 A Yes, I do.

21 Q And again this appears to be another iteration of
22 these royalty calculations that you would be
23 performing, correct?

24 A Yes.

25 Q Is this a document that you would have created or

1 Pat Carron?

2 A Pat Carron would have created it. As you can see,
3 he created it seven minutes after the previous
4 document which was typical of the time that Todd
5 gave me to --

6 Q To turn things around?

7 A Yes.

8 Q Just looking at some of the differences between
9 Exhibit 127 and Exhibit 126, looking at the sales
10 allowance column, the percentage on Exhibit 127
11 for sales allowances is 12 percent whereas
12 on Exhibit 126 and I think all the previous
13 calculations that we've seen the sales allowances
14 were 8 percent, is that correct?

15 A Uh-huh.

16 Q Why would the sales allowances suddenly jump
17 4 percent?

18 A Again it was just a what if for discussion
19 purposes in this context.

20 Q But the sales allowances --

21 A It wouldn't be based on any specific facts from
22 the sales records. It would just be what if the
23 sales allowances were set at 12 percent as opposed
24 to 8 percent.

25 Q And that would have been a suggestion

1 Mr. McFarlane made to you?

2 A Yes.

3 Q Do you remember Mr. McFarlane making that
4 suggestion in this instance?

5 A No, I don't.

6 Q And then I note on Exhibit 127 looking at the
7 publisher's royalty rate, that's now gone back
8 down to 5 percent, correct?

9 A Yes.

10 Q And the writer/creator royalty rate has now jumped
11 back up to 7.5 and 15 percent, correct?

12 A Yes. That's reflecting the handwritten
13 discussions between Neil and Todd.

14 Q Now the total figure is 20,000 -- I can't read
15 the rest of it, but approximately 20,000.

16 A 20,825, yeah.

17 Q So in your discussions with Mr. McFarlane, was
18 there an effort to have the final royalty payment
19 payable to Mr. Gaiman close to some specific
20 amount? You had been talking recently about
21 how you and Mr. McFarlane had sort of what if
22 discussions. For example, if you change this
23 percentage, what happens or if you change that
24 percentage, what happens. Do you recall whether
25 there was some sort of target you were trying

1 to meet saying the ultimate royalty should be
2 approximately \$20,000 or some other figure?

3 A The discussion would have been based on what
4 Mr. McFarlane had in mind in terms of what he
5 would have called a fair and reasonable royalty.
6 These discussions took place for all agreements,
7 not just this particular agreement.

8 Q When you say --

9 A There wasn't a specific target set.

10 Q When you say "royalty," do you mean a royalty
11 percentage or do you mean a total payment or an
12 actual dollar amount?

13 A It could be both because the percentage is
14 incorporated in the rate in the profit margin
15 calculations. So it has to be reasonable and
16 attainable in terms of percentages and the
17 dollars, of course, are significant as well in
18 terms of again what the company or what Todd
19 McFarlane regarded as fair and reasonable.

20 Q Do you remember in this particular instance or
21 at any point during your calculation of these
22 royalties Mr. McFarlane saying "Here's what I
23 think the fair royalty should be to Mr. Gaiman"?

24 A Not specifically, no.

25 Q What do you recall?

1 A He gave me the handwritten notes that he
2 exchanged with Neil Gaiman and said "Run the
3 numbers based on what Neil and I are discussing
4 and then how do the numbers come out when you
5 make some changes to the factors that we've
6 discussed."

7 Q I'll show you what's been previously marked as
8 Exhibit 22.

9 MR. SIMMONS: Scott, that's TM 508.

10 Q (BY MR. SIMMONS) Do you recognize Exhibit 22?

11 A Yes.

12 Q This looks to be a fax that you sent to Terry
13 Fitzgerald on August 4th, '97.

14 A Uh-huh.

15 Q This would have been a few days after all of
16 the computations that we had been looking at
17 previously, correct?

18 A Yes.

19 Q Had you had any previous discussions or
20 communications with Terry Fitzgerald about the
21 calculation of the royalty?

22 A Not to my recollection, no.

23 Q Do you recall why you were sending this fax to
24 Mr. Fitzgerald?

25 A At that time Terry was responsible for all

1 license negotiations and he also was an assistant,
2 if you will, to Todd in terms of, you know,
3 these kinds of discussions. So although I don't
4 recall specifically my discussion with Terry, I
5 would think that he would have -- Todd would
6 have involved him now in the Gaiman/McFarlane
7 discussions and asked Terry to take a look at
8 what I had done. Terry then -- it says, "As per
9 your request." Terry would then have asked me
10 to do some of these what if calculations.

11 Q Looking at the last sentence -- the last two
12 sentences I guess of the last bullet point of
13 this fax, you write "The other two schedules are
14 calculations to make the bottom line come out."
15 You have come out in quotes. Then you write "I
16 do not like them." What do you mean that the
17 schedules were made to make the bottom line,
18 quote, come out?

19 A I had made my calculations based on the
20 McFarlane/Gaiman handwritten notes which gave
21 rise to a royalty of 24,800 and then based on
22 some what ifs reflecting changes to allowances
23 and publisher's royalty rates and expenses, I
24 did the calculations to see whether the revised
25 calculations came out similar to or comparable

1 with, if you will, the royalty rate affecting the
2 Gaiman/McFarlane discussions. I didn't mean the
3 bottom line would come out to some target that
4 was set. It would just come out to -- it would
5 be comparable with the rates that had been
6 discussed between Neil and Todd.

7 Q I guess I don't understand that. You've got
8 written documents or Todd has got a combination
9 of written documents and Todd McFarlane was
10 explaining to you what the royalty percentages
11 are supposed to be, correct?

12 A Uh-huh.

13 Q Royalty is based on the sales of toys and revenue
14 earned from the sales of toys, correct?

15 A Yes.

16 Q So it would seem to me that making the
17 calculations should be fairly a straightforward
18 application of taking the total revenue and
19 multiplying it by the percentages that
20 Mr. McFarlane is giving you, correct?

21 A Yes, and that's what the first schedule reflected.
22 It came out to a royalty of \$24,800.

23 Q So what would there be to make it come out? What
24 would need to be adjusted to make something come
25 out?

1 A Todd would have said, "This schedule reflects
2 what Neil and I have discussed, but we're
3 still discussing this whole situation. If I
4 were to -- again this takes place with all
5 licensors. He would have said "What if I were
6 to negotiate a different set of parameters?
7 Would the numbers come out to something similar
8 to what Neil and I are moving towards agreeing
9 on more or less?" As you see from the subsequent
10 schedules, the bottom line, i.e., the royalty,
11 comes out to a similar royalty based on these
12 different parameters, \$19,800 and \$20,825.

13 Q So then was Mr. McFarlane telling you that the
14 royalty -- when you say "come out," it should
15 come out to be roughly a specific final dollar
16 amount?

17 A No.

18 Q So he was telling you it should come out to some
19 specific percentages?

20 A He was saying "These are the percentages that
21 Neil and I have discussed that are in Neil's
22 notes. If in the discussions some of these
23 other factors change for whatever reason or if
24 we were to change them -- I mean nothing is cast
25 in stone in negotiations between, you know, the

1 two parties -- how do the numbers come out?"

2 Q Then you go on to write "I do not like them." Why
3 didn't you like them?

4 A Because they didn't reflect the percentages that
5 Neil and Todd had agreed to. I'm an accountant.
6 I've got a document that says "Here's the sharing
7 of royalties, seven-and-a-half percent on one
8 property and 15 percent on the other," and this
9 was agreed upon. I don't like changing these
10 percentages without, you know, there being
11 another document that says "Here are the new
12 percentages."

13 Q So your understanding was -- you had an
14 understanding of what the percentages were based
15 on your reading of these documents?

16 A Yes.

17 Q Todd was telling you to apply different
18 percentages and you didn't like that, is that
19 a fair characterization?

20 A Yeah. I don't like, you know, the percentages
21 because they don't reflect the discussions that
22 have taken place so far. It's not that I didn't
23 like the numbers. I didn't like changing the
24 percentages.

25 Q Do you recall the ways in which the numbers

1 you were making come out here did not reflect
2 your understanding of the agreements you had
3 looked at?

4 A Well, changing the royalty rate -- the royalty
5 rate was 5 percent. I didn't like changing it to
6 8 percent. The sales allowances were 8 percent.
7 I didn't like changing it to 12 percent. Changing
8 the creator royalty rates from 3.75 and 7.5
9 to 7.5 and 15 again didn't reflect what had
10 been discussed. An accountant doesn't like to
11 change something that isn't documented.

12 Q Do you recall Terry Fitzgerald or Todd McFarlane
13 ever contacting you after you sent -- contacting
14 you about the royalty calculation after you sent
15 this fax to Terry Fitzgerald?

16 A To my recollection, this was the last of the
17 discussions that had begun on -- was it the 29th
18 of July?

19 Q The 29th or 28th, yes.

20 A Yes. It ended with this fax to Terry on the 4th
21 of August.

22 Q Regarding the schedules that are referred to in
23 your fax, I wasn't able to figure out in looking
24 at the documents whether those schedules were
25 produced to us. I don't know if you are able

1 to tell whether any of the schedules I had you
2 looking at this afternoon are the schedules that
3 would have been attached to this fax.

4 A I'm almost certain that the first schedule that
5 I referred to is the schedule that shows a
6 royalty payable of \$24,800 because the first
7 schedule is a calculation which I believe
8 reflects the agreement between Todd and Gaiman,
9 as Todd explained it to me. The other two
10 schedules that I referred to in my fax cover
11 sheet I believe are the last two schedules that
12 were discussed --

13 Q And those would have been --

14 A -- which come out to a royalty of 20,825 and
15 19,840. We marked them as exhibits. Exhibits 126
16 and 127 are the other two schedules.

17 MR. SIMMONS: Here's another new document.
18 This will be 128.

19 (Deposition Exhibit Number 128 was marked
20 for identification by the Court Reporter.)

21 Q (BY MR. SIMMONS) Do you recognize Exhibit 128?

22 A Yes, I do.

23 Q This appears to be a memo that you sent to Wanda
24 Kolomyjec.

25 A Kolomyjec.

1 Q Kolomyjec. Thank you.

2 Is Ms. Kolomyjec Todd McFarlane's wife?

3 A Yes, she is.

4 Q Do you remember what prompted you to send this
5 memo to Wanda?

6 A From the first sentence, it says "We have no
7 record of any royalty payments to Neil Gaiman."
8 I conclude that I received a phone call from Wanda
9 saying "Have we made any royalty payments to
10 Neil Gaiman based on all of these discussions,
11 if you recall, that took place back in 1997?"

12 Q Do you recall any of the specifics of the phone
13 conversation with Ms. Kolomyjec?

14 A No, I don't.

15 Q Do you have any independent recollection of
16 anything surrounding this communication other
17 than what's actually contained in Exhibit 128
18 itself?

19 A Everything that I can recall is in the memo.

20 Q Did anybody contact you from Todd McFarlane
21 Productions or anybody associated with Todd
22 McFarlane contact you again about the royalty
23 payments to Neil Gaiman after you received
24 Exhibit 128?

25 A Not to my recollection, no.

1 Q Did there come a time when you -- did you ever
2 understand that Todd McFarlane had decided to
3 rescind or no longer follow his royalty agreement
4 with Mr. Gaiman?

5 MR. SALSICH: I'm going to object to the
6 extent it assumes facts not in evidence and it
7 assumes that there was a royalty agreement with
8 Todd McFarlane, but you can answer the question.

9 Q (BY MR. SIMMONS) Did you understand the question?

10 A Can you repeat it, please?

11 Q Sure.

12 I want to know if you ever heard from anyone
13 that there was a point in which Todd McFarlane had
14 decided to rescind or no longer continue making
15 royalty payments to Mr. Gaiman for action figures
16 or any other items.

17 A No, I did not. As I say in the second to the last
18 sentence to this memo, I was given no information
19 on the final agreement or instructions to make
20 any payment.

21 Q So Exhibit 128 is the last communication you can
22 remember with anybody about royalty payments to
23 Mr. Gaiman?

24 A Yes, it is.

25 Q We're almost done here, by the way, at least on

1 my end. He may have some questions for you.

2 I'll show you what's been previously marked
3 as Exhibit 2. Do you recognize Exhibit 2,
4 Mr. Inglis?

5 A Yes, I do.

6 Q You talked earlier about having reviewed some
7 correspondence between Mr. McFarlane and
8 Mr. Gaiman when you were attempting to calculate
9 the royalties.

10 A Yes.

11 Q Is Exhibit 2 one of those documents?

12 A Yes, it was.

13 Q So the percentages in Exhibit 2 are some of
14 the percentages you were using in making your
15 calculations, is that fair?

16 A There are a number of percentages as you can see.
17 The relevant percentage is under merchandising
18 and promotional licensing which says 15 percent
19 of publisher's net receipts.

20 Q It was your understanding that 15 percent is the
21 royalty Mr. Gaiman was entitled to for the action
22 figures that TMP International was producing?

23 A According to this memo. There were these
24 subsequent -- there were at least handwritten
25 memos that accompanied this or came later.

1 Q I'll show you what's previously been marked as
2 Exhibit 19.

3 A Okay.

4 Q Do you recognize Exhibit 19?

5 A Yes, I do.

6 Q And Exhibit --

7 A As you can see, it was sent to me by Sheila Egger.

8 Q The Alan (sic) referred to at the top of the fax
9 is you?

10 A Yes. It's misspelled.

11 Q So Exhibit 19 is another document you referred
12 to in order to develop your understanding of
13 what the agreement was between Mr. Gaiman and
14 Mr. McFarlane?

15 A Yes, except this document was really outside the
16 scope of the financial analysis that I did in
17 that it refers to other matters besides what Neil
18 may or may not have been entitled to in terms
19 of royalty. It says "You'll be using the figures
20 we put together based on the DC deal and that my
21 rights to Cogliostro and Medieval Spawn will be
22 exchanged for your share of Miracleman" and so
23 on. These were obviously discussions between
24 Neil and Todd during the discussions that
25 involved my financial analysis, but I would not

1 have been involved in any of these discussions.

2 Q So Sheila -- I'm looking at Exhibit 2 and
3 Exhibit 19 and I'm just noting the fax time on
4 the top. It appears to be all part of the same
5 fax.

6 A Yes.

7 Q Do you recall Todd McFarlane, Sheila Egger or
8 anybody else associated with them saying "We're
9 going to fax you the documents that represent
10 the agreement. You should use these in making
11 your royalty calculations" or something to that
12 effect?

13 A Sheila would have called me and said "I'm sending
14 documents that are reflecting discussions that
15 have taken place between Neil and Todd. Look
16 at them and make sure that, you know, what you're
17 doing is consistent with these documents." I
18 see there were four pages that went with this
19 fax. So this memo and -- in fact, the previous
20 memo says page 3 and page 4. So I would have got
21 both of these memos at the same time. In fact,
22 the date and time are consistent.

23 Q I'll show you what's been previously marked as
24 Exhibit 20. Again regarding Exhibit 20, I'm
25 just wondering if this is a document you've ever

1 seen before.

2 A Yes, it is.

3 Q Was this a document that Mr. McFarlane or
4 somebody associated with him sent to you at the
5 time you were calculating the royalties for
6 Mr. Gaiman?

7 A Yes.

8 Q So did you sort of consider all three of the
9 exhibits I have just shown you, 2, 19 and 20?
10 Did you kind of look at those as a package
11 representing an agreement between the parties?

12 A Yes, except, as I said, Exhibit 19 was not of
13 particular significance to me in doing the
14 calculation. Obviously the previous exhibit was
15 relevant and the quotes of royalty percentage.

16 MR. SALSICH: I would just like to interpose
17 an objection here. Again it assumes facts not in
18 evidence that there was an agreement between the
19 parties, but obviously subject to that objection,
20 your answer can stand.

21 Give me a chance, I'm reacting slowly, to get
22 my objection out. Thanks.

23 MR. SIMMONS: He had to wake up early to
24 catch a flight. So you got to cut him some
25 slack.

1 Q (BY MR. SIMMONS) I think this is my last exhibit.
2 I wasn't anticipating using it so I don't have
3 copies, but we'll make copies afterwards. This
4 has previously been marked as Exhibit 18.

5 MR. SALSICH: I have a copy of that.

6 MR. SIMMONS: Oh, you do?

7 MR. SALSICH: Yeah.

8 Q (BY MR. SIMMONS) You can take a look at my
9 copy.

10 A Okay.

11 Q Previously you testified when you first started
12 making the royalty calculations that you based
13 them on some draft agreement that had been
14 provided to you. I'm wondering if Exhibit 18 or
15 some variation of Exhibit 18, because I note that
16 Exhibit 18 has handwriting on it and some other
17 notes, but the typewritten contract portion of
18 Exhibit 18, I'm wondering if you recognize that
19 to be the draft agreement you were referring to
20 earlier.

21 A Yes. That was the draft agreement.

22 MR. SIMMONS: Let me just take a minute to
23 look at my notes and then I may be done.

24 We can go off the record.

25 (Off the record.)

1 Q (BY MR. SIMMONS) I think I've got one more
2 question regarding the action figures, Mr. Inglis,
3 that we've been referring to when you were making
4 your calculations. There was the Angela action
5 figures, the Medieval Spawn action figures and
6 I think there may or may not have been some
7 Cogliostro action figures in there. I'm just
8 wondering -- you worked with TMP International
9 till 2001.

10 A Uh-huh.

11 Q I'm wondering if you recall roughly how long TMP
12 International continued to manufacture the Angela
13 action figure.

14 A I don't recall.

15 Q Do you recall whether they stopped manufacturing
16 it shortly after you made these royalty
17 calculations in 1997 or do you think it went on
18 for a couple more years after that? I'm curious
19 whether roughly you have any idea how long they
20 continued making those figures.

21 A I think the Angela action figure ended in terms
22 of retail production pretty soon after -- either
23 at this time or pretty soon after that because I
24 don't recall seeing a lot of Angela sales, you
25 know, subsequent to this period.

1 MR. SIMMONS: That's it on my end.

2 MR. SALSICH: Scott?

3

4 EXAMINATION

5 BY MR. FELDMANN:

6 Q This is Scott Feldmann. I represent Image
7 Comics.

8 Can you hear me?

9 A Yes.

10 Q I just have a few questions for you, sir.

11 Have you ever had any direct discussions with
12 Neil Gaiman before?

13 A No, I have not.

14 Q Have you ever met him?

15 A No, I have not.

16 Q So in terms of your understanding as to the
17 relationship between Mr. McFarlane or any of his
18 various entities and Mr. Gaiman, that information
19 would be based solely on what Mr. McFarlane told
20 you or the correspondence that you saw that you
21 testified about earlier, is that right?

22 A That is correct.

23 Q There are no other written documents other than
24 that correspondence that Mr. McFarlane showed you
25 that would form the basis for your understanding

1 of that relationship?

2 A No, there are not to my knowledge.

3 Q Now, you used a couple of phrases here that I
4 wrote down and you can correct me if I'm wrong.
5 In terms of Mr. McFarlane's characterization
6 of the relationship with Mr. Gaiman here, you
7 said they were moving towards an agreement in
8 discussions that he had with him. I take it
9 that as far as you're concerned the person who
10 would know best as to that relationship would be
11 Mr. McFarlane and Mr. Gaiman, is that right?

12 A Yes.

13 Q Did anybody else other than Mr. McFarlane at any
14 time and other than counsel have discussions with
15 you about the legal relationship that may or may
16 not exist between Mr. Gaiman and Mr. McFarlane or
17 his company?

18 MR. SALSICH: Let me just put an objection
19 in here, Scott, simply to the extent that that
20 calls for information that would be protected by
21 the attorney/client privilege. I'd object to
22 that and instruct you not to answer.

23 All I mean by that, Mr. Inglis, is that I
24 understand Mr. Feldmann's question not to be
25 asking you for any discussions you had with

1 lawyers about any topics he was mentioning but
2 just with any third party.

3 Is that correct, Scott?

4 MR. FELDMANN: I approached it that way.

5 Q (BY MR. FELDMANN) I do not want to know anything
6 about any discussions you had with lawyers either
7 directly or indirectly through intermediaries.

8 MR. SIMMONS: Can we just have the question
9 reread for my benefit?

10 MR. FELDMANN: Would you please read it
11 back?

12 MR. SIMMONS: Can you read it back?

13 (The record was read back by the Court
14 Reporter as follows:

15 "Q Did anybody else other than
16 Mr. McFarlane at any time and other
17 than counsel have discussions with you
18 about the legal relationship that may
19 or may not exist between Mr. Gaiman
20 and Mr. McFarlane or his company?"

21 THE WITNESS: Can I just have an explanation
22 as to -- what do you mean by a legal relationship?

23 Q (BY MR. FELDMANN) Let me come at it from another
24 approach. Did you ever have any discussions,
25 again other than with any lawyers, as to whether

1 or not there was a contract that had been formed
2 between Mr. McFarlane and Mr. Gaiman?

3 A No, I did not.

4 Q So as far as you know, the contract may have been
5 formed or it may not have? That's going to depend
6 upon the documents that you've seen and what
7 the parties have to say, would that be a fair
8 assessment?

9 A That's correct. As I stated in my memo,
10 Exhibit 128, dated January 5th, 1999 to Wanda
11 Kolomyjec, I was given no information on the
12 final agreement or instructions to make any
13 payment.

14 Q Now, did you ever have any discussions with anyone
15 at any time about the right to use Neil Gaiman's
16 name in association with any of the toys or comic
17 books that were being sold?

18 A I did not have any discussions, no.

19 Q Before this lawsuit was filed, did you ever hear
20 of any complaints by Mr. Gaiman that his name was
21 being used without permission?

22 A No, I did not.

23 Q Did you ever hear of any complaints that his name
24 had been left off of a comic book or a toy or
25 poster or any other item when his name should

1 have been used in association with that?

2 A No, I did not.

3 Q I believe you were the CFO, is that right, of

4 TMP?

5 A Yes. TMP being TMP International, Inc.?

6 Q Yeah, TMP International, Inc.

7 A Yes.

8 Q Now, was it the common practice at the time you

9 were there that if action figures were made under

10 a license that TMP had the right to use the

11 artist's name in association with either action

12 figures, posters or any other items?

13 A There were certain action figures sold or

14 manufactured and sold that did have the creator's

15 name on them, not Neil Gaiman's but other

16 creators.

17 Q Did you have any general understanding that

18 creators generally want a credit for figures of

19 theirs that were used in any goods that were

20 sold incorporating those figures?

21 A Could you repeat the question?

22 Q Is it your general understanding that creators

23 wanted to have their name used in association

24 with goods that incorporated the various

25 characters that they may have created or

1 co-created?

2 A I did not have any specific understanding, no.

3 Q Did you hear about any complaints that were made
4 by Mr. Gaiman or any of his companies as to any
5 advertising or any promotions that were made by
6 any of the McFarlane companies in association
7 with the Angela, Medieval Spawn or Cogliostro
8 characters?

9 A No. I have no information on that.

10 MR. FELDMANN: That's all that I have.

11

12 EXAMINATION

13 BY MR. SALSICH:

14 Q I just have a few questions for you, Mr. Inglis,
15 just to clarify a few points. I'll try to make
16 this go very quickly.

17 You were shown several different exhibits
18 that you stated were schedules or reports
19 prepared by Mr. Carron that you then sent to
20 Mr. McFarlane. Do you recall that general
21 discussion?

22 A Yes.

23 Q The first of those documents I believe was marked
24 as Exhibit 122 and then there was Exhibit 123 in
25 which you calculated a royalty due to Mr. Gaiman

1 of approximately \$155,000. Do you recall that?

2 A Yes.

3 Q Then later the next day or the next several days
4 you also sent to Mr. McFarlane or his companies
5 some other reports in which the royalties
6 calculated owing to Mr. Gaiman were \$24,800 and
7 approximately \$19,000 and \$20,000. Do you recall
8 that discussion?

9 A Yes.

10 Q My question is not about the royalty calculations
11 but about the underlying sales figures included
12 in those documents. Are you confident in the
13 underlying sales figures, the units sold and the
14 total sales price contained on the reports that
15 you gave to Mr. McFarlane?

16 A Yes, I am.

17 Q Other than the first revision between Exhibit 122
18 and Exhibit 123 which I believe you testified
19 was a slight reworking of some of the underlying
20 figures that Mr. Carron had given you, from the
21 point of Exhibit 123 onward, the total units sold
22 and the total revenue figures did not change on
23 any of the subsequent reports, did they?

24 A That is correct.

25 Q You were shown Exhibit 125 which was a memo

1 from you dated July 30th and contained a report
2 behind that in which the writer/creator royalty
3 calculated was \$24,800. Do you recall that?

4 A Yes.

5 Q Among the various reports and memos that you
6 sent to Mr. McFarlane or his companies regarding
7 the royalty calculations to Mr. Gaiman, is
8 Exhibit 125 the only one that reflects your
9 understanding of the correspondence between
10 Mr. McFarlane and Mr. Gaiman?

11 A That is correct.

12 Q You were asked a series of questions and shown
13 some exhibits which had been previously marked
14 in other depositions and I'm going to just hand
15 them to you briefly. They were Exhibits 69 and
16 then Exhibits 73, 74, 75, 76 and 77. Do you
17 recall the testimony you gave regarding those
18 exhibits earlier today?

19 A Yes, I do.

20 Q I just have a simple question about them. You are
21 able to identify the format of those documents, is
22 that correct?

23 A Yes.

24 Q Are you able, as you sit here today, to vouch for
25 the accuracy of any of the numbers contained in

1 those production records contained in the exhibits
2 I just mentioned?

3 A No, I'm not.

4 Q So you're familiar with the format and you are
5 confident in the testimony you gave that when
6 you said that a particular column referred to a
7 regular price and a particular column referred
8 to a discounted price or an international price
9 that that's what that column referred to, is that
10 correct?

11 A Yes.

12 Q But you're not able to vouch for the accuracy of
13 whether any particular price was correct for any
14 particular item shipped, is that correct?

15 A That's right.

16 Q You were asked some questions early in the
17 deposition describing the relationship between
18 the companies, TMP International and McFarlane
19 Worldwide. Do you recall that testimony?

20 A Yes.

21 Q I have a question about McFarlane Worldwide. Did
22 that company only produce or distribute toys or
23 action figures?

24 A Yes.

25 Q McFarlane Worldwide does not have any involvement

1 in the shipment or selling of comic books, is that
2 correct?

3 A That is correct.

4 Q Or any other materials?

5 A That is correct.

6 Q You also listed I think two or three examples of
7 some of the license agreements that TMPI has. You
8 mentioned Sony Signatures with the Kiss action
9 figures and you also mentioned the National Hockey
10 League and the National Football League. Were
11 those the only three license agreements that TMP
12 International has with other licensors?

13 A No. There were many license agreements besides
14 these.

15 Q I'm certainly not going to ask you to list them
16 all. Would you say that TMPI might have somewhere
17 between 10 and 20 license agreements with other
18 licensors or would it be a number higher than
19 50 or some other range of numbers?

20 A It would be a number probably higher than 50.

21 Q You testified about the typical practice that
22 you had with Mr. McFarlane in negotiating these
23 various license agreements. Is it accurate to
24 say that you and Mr. McFarlane frequently
25 discussed a variety of factors including royalty

1 rates, et cetera, in all of these licensing
2 agreement negotiations?

3 A Yes.

4 Q Was it also your testimony that in the context of
5 a license agreement negotiation that Mr. McFarlane
6 would frequently ask you to change various
7 factors in arriving at a royalty rate or royalty
8 agreement, is that correct?

9 A Yes.

10 Q When Mr. McFarlane was asking you to change a
11 royalty rate or change some other factor, a
12 definition of net sales, for example, was he doing
13 that during the negotiations of the license
14 agreement or after the negotiations had been
15 completed?

16 A It would have been during the negotiations.

17 Q You were asked to look at a document that had
18 been previously marked as Exhibit 72. Do you
19 see that document?

20 A Yes.

21 Q I believe you stated -- you were asked a question
22 about a discrepancy in a certain document between
23 the units produced and the total units sold. Do
24 you recall that discussion?

25 A Yes.

1 A Yes.

2 Q There was a mention that the total units sold
3 appears to be higher than the units produced.

4 A Yes.

5 Q You were asked a question of whether you believe
6 that the sales figure was more accurate than the
7 units produced and I believe the word you used
8 was absolutely. Do you recall that?

9 A Yes.

10 Q I understood your testimony to be that that was
11 because you understood units sold to be based on
12 actual sales invoices, is that correct?

13 A Yes.

14 Q As you sit here today, though, and you look at the
15 figures in the second column of Exhibit 72 which
16 is a column called "Total Units Sold," are you
17 aware today whether those figures themselves are
18 actually the accurate numbers?

19 A I'd have to compare the numbers on this schedule
20 with the sales records and of course I haven't had
21 the opportunity to do that.

22 Q So when you stated that you believe that the
23 figures reflected in the units sold column were
24 more accurate than the units produced column, was
25 that simply because you are aware that when units

1 sold are summarized like this, they are taken from
2 actual sales invoices and you're not able to
3 verify how units produced are taken?

4 A That is correct.

5 Q As you recall earlier, we had a discussion about
6 the documents that you reviewed in preparation for
7 this deposition and the documents that Mr. Carron
8 assembled for you during July of 1997. After we
9 went off the record and then we came back on the
10 record, you were asked a question of whether any
11 of the documents Mr. Carron produced you had seen
12 in the documents you reviewed yesterday and you
13 stated yes. You've testified that a number of
14 reports that we've marked as exhibits today were
15 documents that were prepared by Mr. Carron. Do
16 you recall that?

17 A Yes.

18 Q Are those documents you're referring to when you
19 said that you had seen some of Mr. Carron's
20 documents yesterday the documents you reviewed to
21 prepare for this deposition?

22 A That is correct.

23 Q You were asked some questions about a document
24 that was marked today as Exhibit 124 and I've
25 just handed you that document again. Would you

1 take a look at the second page of that document?
2 Do you see -- do you recall being asked some
3 questions about the sentence in there where
4 you state "Because of the time constraint,
5 we have used percentages in calculating the
6 deductions from gross sales," et cetera? Do
7 you see that?

8 A Yes, I do.

9 Q I believe you testified that the percentages you
10 used for the deductions from gross sales were
11 estimates, is that correct?

12 A Yes.

13 Q But you do go on to say in that letter that the
14 important numbers, the units sold and the gross
15 sales, do come directly from the sales reports
16 and that those are accurate numbers, is that
17 correct?

18 A Yes.

19 Q So the only estimates that you used in preparing
20 the various reports you prepared for Mr. McFarlane
21 were estimates as to the deductions from gross
22 sales, correct?

23 A Yes.

24 Q You also testified that while those were estimates
25 or averages that those were based on historical

1 fact and that they could be backed up, correct?

2 A That's correct.

3 Q Do you recall testifying that at least in the
4 early time period in which you were involved with
5 TMPI that Todd McFarlane deferred the payments
6 that he would have been entitled to under his
7 license agreement --

8 A Yes.

9 Q -- for the Spawn action figures?

10 A Yes.

11 Q I think you testified that in effect it was Todd
12 who told you not to pay those royalties, is that
13 correct?

14 A That's correct.

15 Q Do you recall the specifics of anything that
16 Todd told you on that or is it just your general
17 impression that Todd had given you instructions
18 to defer those payments?

19 A Well, there was in fact an agreement between Todd
20 and the company, TMP International, Inc., that was
21 reflected in board meeting minutes in which Todd
22 agreed to defer the royalties.

23 Q Other than that, you have no independent knowledge
24 of the arrangement between Todd and TMPI as far
25 as royalty payments or the deferment of royalty

1 payments?

2 A No, I do not.

3 MR. SALSICH: I believe that's all I

4 have.

5 Jeff, any follow-up?

6 MR. SIMMONS: I'm done.

7 MR. SALSICH: Scott?

8 MR. FELDMANN: I'm done.

9 MR. SALSICH: Mr. Inglis, you'll have
10 the opportunity to read the transcript of your
11 deposition today. We're going to ask for a
12 fairly expedited production of that transcript
13 and as soon as I get it, I'll get it to you
14 to read and review and make sure that it's
15 accurate.

16 If you see any changes that need to be made
17 to the accuracy, you'll have the opportunity to
18 do so just with the caveat if there are some
19 changes you need to make, the other parties may
20 have the opportunity to ask you questions on if
21 they decided those changes aren't material.

22 Do you understand?

23 THE WITNESS: Yes, I do.

24 MR. SALSICH: That's all.

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(The deposition concluded at or about
2:30 p.m.)

INSTRUCTIONS TO WITNESS

Read your deposition carefully. It is your right to read your deposition and make changes in form or substance. You should assign a reason in the appropriate column on the errata sheet for any change made.

After making any change in form or substance which has been noted on the following errata sheet along with the reason for any change, sign your name on the errata sheet and date it.

Then sign your deposition at the end of your testimony in the space provided. You are signing it subject to changes you have made on the errata sheet, which will be attached to the deposition before filing. You must sign it in front of a notary public.

Return the original errata sheet to the court reporter promptly. Court rules require filing within 30 days after you receive the deposition.

1 Deposition of: Allan Inglis
 Date of Deposition: August 22, 2002
 2 File No.: 02-C-0048-S
 Case Name: Neil Gaiman, and Marvels and Miracles,
 3 LLC vs. Todd McFarlane, Todd McFarlane
 Productions, Inc., TMP International,
 4 Inc., McFarlane Worldwide, Inc., and
 Image Comics, Inc.
 5

6 I WISH TO MAKE THE FOLLOWING CHANGES FOR THE FOLLOWING
 REASONS:
 7

8	PAGE	LINE	
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23 _____ DATE: _____
 24 ALLAN INGLIS
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5 I hereby certify that the within and

6 foregoing is a true and correct transcript of

7 the testimony as given by me and corrections, if

8 any, as made and initialed by me. Dated this

9 _____ day of _____, 2002.

10

11

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13 _____
 ALLAN INGLIS

14 _____
 Notary Signature

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Noreen K. Cwidak, CSR-3183, RPR
Notary Public, Oakland County
My Commission Expires: 1-17-06